

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JESSICA GRAZIADIO and MARYANN GRAZIADIO,

Plaintiffs,

Civil Action No:
10445/07

-against-
TARGET CORPORATION,

Judges Assigned:
Karas, J
Fox, M

Defendant.

ANSWER

-----X

Defendant, TARGET CORPORATION, by its attorneys, SIMMONS, JANNACE & STAGG, L.L.P., as and for its Answer to the Complaint of plaintiffs, responds as follows:

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF JESSICA GRAZIADIO:

1. Admits the allegations contained in numbered paragraph "1" of the verified complaint.

2. Denies in the form alleged the allegations contained in numbered paragraph "2" of the verified complaint and leaves all questions of law to the Court.

3. Denies in the form alleged the allegations contained in numbered paragraph "3" of the verified complaint and leaves all questions of law to the Court.

4. Denies in the form alleged the allegations contained in numbered paragraph "4" of the verified complaint and leaves all questions of law to the Court.

5. Admits the allegations contained in numbered paragraph "5" of the verified complaint.

6. Denies in the form alleged the allegations contained in numbered paragraph "6" of the verified complaint and leaves all questions of law to the Court.

7. Denies in the form alleged the allegations contained in numbered paragraph "7" of the verified complaint and leaves all questions of law to the Court.

8. Denies the allegations contained in numbered paragraph "8" of the verified complaint.

9. Denies the allegations contained in numbered paragraph "9" of the verified complaint.

10. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "10" of the verified complaint.

11. Denies the allegations contained in numbered paragraph "11" of the verified complaint.

12. Denies the allegations contained in numbered paragraph "12" of the verified complaint.

13. Denies in the form alleged the allegations contained in numbered paragraph "13" of the verified complaint and leaves all questions of law to the Court.

14. Denies in the form alleged the allegations contained in numbered paragraph "14" of the verified complaint and leaves all questions of law to the Court.

15. Denies in the form alleged the allegations contained in numbered paragraph "15" of the verified complaint and leaves all questions of law to the Court.

16. Denies in the form alleged the allegations contained in numbered paragraph "16" of the verified complaint and leaves all questions of law to the Court.

17. Denies in the form alleged the allegations contained in numbered paragraph "17" of the verified complaint and leaves all questions of law to the Court.

18. Denies in the form alleged the allegations contained in numbered paragraph "18" of the verified complaint and leaves all questions of law to the Court.

19. Denies in the form alleged the allegations contained in numbered paragraph "19" of the verified complaint and leaves all questions of law to the Court.

20. Denies in the form alleged the allegations contained in numbered paragraph "20" of the verified complaint and leaves all questions of law to the Court.

21. Denies in the form alleged the allegations contained in numbered paragraph "21" of the verified complaint and leaves all questions of law to the Court.

22. Denies the allegations contained in numbered paragraph "22" of the verified complaint.

23. Denies the allegations contained in numbered paragraph "23" of the verified complaint.

24. Denies the allegations contained in numbered paragraph "24" of the verified complaint.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF MARYANNE GRAZIADIO:

25. Repeats and realleges the answers to paragraphs "1" to "24" as fully set forth herein.

26. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "26" of the verified complaint.

27. Denies the allegations contained in numbered paragraph "27" of the verified complaint.

28. Denies plaintiffs are entitled to the relief requested in the "WHEREFORE Clause."

29. Defendant demands that liability, if any, be apportioned.

AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE

30. Plaintiffs' complaint fails to state a cause of action.

AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE

31. Upon information and belief, the injuries allegedly sustained by plaintiffs were not as a result of any culpable conduct by the defendant herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiffs, which contributed to or caused plaintiffs' alleged injury.

AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE

32. Upon information and belief, plaintiffs have not effectuated valid service, pursuant to the CPLR, and therefore, this Court lacks jurisdiction over the person of the defendant.

AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE

33. Upon information and belief, any damages sustained by plaintiffs were caused, in whole or in part, by the culpable conduct of plaintiffs and/or were aggravated by the culpable conduct of plaintiffs.

AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE

34. If plaintiffs prove at trial the existence of a dangerous condition, all of which is denied, upon information and belief, any damages sustained by plaintiffs were caused by plaintiffs having voluntarily and unreasonably assumed a known and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

AS AND FOR ITS SIXTH AFFIRMATIVE DEFENSE

35. This defendant will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

AS AND FOR ITS SEVENTH AFFIRMATIVE DEFENSE

36. Upon information and belief, defendant never received actual or constructive notice of any defective or dangerous condition, and therefore, it cannot be liable for any alleged injuries suffered by plaintiffs.

AS AND FOR ITS EIGHTH AFFIRMATIVE DEFENSE

37. Upon information and belief, if plaintiffs suffered any damages as alleged in the Verified Complaint, such damages were as a result of an independent superseding act by a third party for which defendant cannot be held liable, and defendant's conduct was in no way the proximate cause of such damages.

AS AND FOR ITS NINTH AFFIRMATIVE DEFENSE

38. If plaintiffs suffered damages as alleged, then plaintiffs failed to mitigate such damages.

AS AND FOR ITS TENTH AFFIRMATIVE DEFENSE

39. If plaintiffs suffered any damages as a result of a dangerous condition, all of which is specifically denied, the dangerous condition existed as a result of extreme weather which

made it impossible for TARGET CORRORATION to remedy the condition.

AS AND FOR ITS ELEVENTH AFFIRMATIVE DEFENSE

40. If plaintiffs herein have received remuneration and/or compensation for some or all of his or her claimed economic loss, or will with reasonable certainty receive renumeration and/or compensation for said loss in the future, this defendant is entitled to have plaintiffs' award, if any, reduced by the amount of said remuneration and/or compensation, pursuant to Section 4545(c) of the CPLR.

AS AND FOR ITS TWELFTH AFFIRMATIVE DEFENSE

41. Upon information and belief, any damages sustained by the plaintiffs were caused, in whole or in part, by an unavoidable accident, which was not intended and could not have been foreseen or prevented by the exercise of reasonable care.

WHEREFORE, for all of the foregoing reasons, it is respectfully requested that plaintiffs' verified complaint be dismissed in its entirety, and that defendant be awarded the costs and disbursements of this action, reasonable attorneys fees, and such other and further relief as this Court may deem just and proper.

Dated: Syosset, New York
November 20, 2007

Simmons, Jannace & Stagg, L.L.P.
Attorneys for Defendant

BY: /s/ Kevin P. Simmons
Kevin P. Simmons (ks-7818)

Office & P.O. Address:
75 Jackson Avenue
Syosset, New York 11791
(516) 357-8100

TO:

DAVID DAMBROFF, ESQ.
Attorney for Plaintiffs
Office & Post Office Address
One Water Street - First Floor
White Plains, New York 10601
(914) 686-4300